IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 98 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
DR.SURESH G. SHAH - Respondent(s)

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Appearance :
MRS.MONA M BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Mrs. Mona Bhatt, learned counsel for the Revenue. None for the respondent though served.

2. At the instance of the Revenue, the Income-tax Appellate Tribunal, Ahmedabad Bench “C” has referred the following question to this Court for its opinion, which arises out of Income-tax Appeal No. 2628/Ahd/91 pertaining to assessment year 1986-87.

> “Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the C.I.T. cannot exercise jurisdiction u/s. 263 for the purpose of initiating penalty proceedings u/s. 271[1][a] and 273[2][c]?”

3. The short facts necessary for disposal of the present Reference are that the assessing officer assessed the total income for the current year 1986-87 at Rs. 2,02,240/- under section 143[3] of the Income-tax Act. The Commissioner of Income-tax Act, on examination of the records, noticed that the assessment order passed by the

assessing officer was erroneous and prejudicial to the interest of the Revenue on account of the fact, amongst others, that the assessing officer failed to initiate penalty proceedings under Section 271[1][a] and Section 273[2][c] while completing the assessment. After taking into consideration the reply to the show cause notice under Section 263, the Commissioner of Income-tax recorded his disagreement with the submissions made by the assessee, set aside the assessment and directed initiation of penalty proceedings. The assessee being dissatisfied, took up the matter before the Tribunal, the Tribunal observed that the Commissioner of Income-tax, while exercising powers under Section 263 of the Act was not entitled to direct initiation of proceedings, because, it was within the jurisdiction of the assessing officer. The Revenue, feeling dissatisfied, requested the Tribunal to refer the question to this Court.

4. In the matter of **Commissioner of Income-tax Vs. Parmanand Patel [2005 278 ITR 3]**, a Division

Bench of this Court, in its judgment dated 6th July, 2005, has observed that the Commissioner is not empowered to record satisfaction by invoking Section 271[1] of the Act and if he is not entitled to do so, on his own, he cannot do it by directing the assessing authority. The Court observed that in other words, what the Commissioner himself cannot do, he cannot get it done through the assessing authority by exercising revisional powers.

5. In view of the authoritative pronouncement by this Court, the question will have to be answered against the interest of the Revenue and in favour of the assessee. It is accordingly answered. The Reference stands disposed of. No costs.

[R.S. GARG, J.]

[M.R. SHAH, J.]

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